

SUBCHAPTER IV
NATIONAL GUARD AND
STATE DEFENSE FORCE

SECTION 220. 321.39 (1) (a) (intro.) of the statutes is created to read:

321.39 (1) (a) (intro.) The governor may order into state active duty members of the national guard under the following circumstances:

SECTION 221. 321.39 (1) (a) 3. of the statutes is created to read:

321.39 (1) (a) 3. If the governor declares a state of emergency relating to public health under s. 166.03 (1) (b).

SECTION 222. 321.40 (2) (f) of the statutes is created to read:

321.40 (2) (f) Failing to be an actively drilling guard member upon the date of the satisfactory completion of a full-time or part-time course in a qualifying school.

****NOTE: The drafting subcommittee wanted to highlight this change for the special committee. Under current law, a national guard member is not eligible for an educational benefit unless the member meets specified eligibility criteria. This bill states that a member is not eligible for that benefit if the member fails to be an actively drilling national guard member on the date of satisfactory completion of the course.

SECTION 223. 321.40 (6) (d) of the statutes is created to read:

321.40 (6) (d) No guard member may receive a tuition grant under this section unless he or she is a member in good standing in the national guard at the time of completion of the course.

SECTION 224. 321.51 (2) (b) of the statutes is created to read:

321.51 (2) (b) If the state defense force is organized under sub. (1), the adjutant general may perform the duties under s. 321.04 (2) (a), (b), (c) and (d) for the state defense force.

SECTION 225. 321.51 (2) (e) of the statutes is created to read:

321.51 **(2)** (e) If the state defense force is organized under sub. (1), the adjutant general shall perform the duties under s. 321.04 (1) (a) to (n) and (q) for the state defense force.

SECTION 226. Subchapter V (title) of chapter 321 [precedes 321.60] of the statutes is created to read:

CHAPTER 321

SUBCHAPTER V

RIGHTS OF SERVICE MEMBERS

CHAPTER 322

WISCONSIN CODE OF MILITARY

JUSTICE

SUBCHAPTER I

GENERAL PROVISIONS

322.0001 Criminal code interaction. (1) Chapters 939, 967 to 973, and 975 to 979 do not apply to proceedings under this chapter.

(2) A crime under this code is a crime under s. 939.12. A felony under this code is a felony under s. 939.22 (12). A misdemeanor under this code is a misdemeanor under s. 939.22 (20).

322.001 Article 1—Definitions. In this chapter, unless the context otherwise requires:

(1) “Accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

1 (2) "Cadet," "candidate," or "midshipman" means a person who is enrolled in
2 or attending a state military academy, a regional training institute, or any other
3 formal education program for the purpose of becoming a commissioned officer in a
4 state military force.

5 (3) "Classified information" means any of the following:

6 (a) Any information or material that has been determined by an official of the
7 United States or any state subject to law, an executive order, or regulation to require
8 protection against unauthorized disclosure for reasons of state security or national
9 defense or foreign relations of the United States.

10 (b) Any restricted data, as defined in 42 USC 2014 (y).

11 (4) "Code" means this chapter.

12 (5) "Commanding officer" includes only commissioned officers of the state
13 military forces and shall include officers in charge only when administering
14 nonjudicial punishment under s 322.015. The term 'commander' has the same
15 meaning as 'commanding officer' unless the context otherwise requires.

16 (6) "Convening authority" includes, in addition to the person who convened the
17 court, a commissioned officer commanding for the time being or a successor in
18 command to the convening authority.

19 (7) "Day" means calendar day and is not synonymous with the term "unit
20 training assembly." Any punishment authorized by this code which is measured in
21 terms of days shall, when served in a status other than annual field training, be
22 construed to mean succeeding duty days.

23 (8) "Duty status other than state active duty" means any other type of duty
24 including Unit Training Assemblies or drills but excludes duty not in federal service

1 and not full-time duty in the active service of the state; under an order issued by
2 authority of law and includes travel to and from duty.

3 (9) "Enemy" includes organized forces of the enemy in time of war, any hostile
4 body that U.S. or state forces may be opposing, such as a rebellious mob or band of
5 renegades, and includes civilians as well as members of military organizations.
6 Enemy is not restricted to the enemy government or its armed forces.

7 (10) "Enlisted member" means a person in an enlisted grade.

8 (11) "Forfeiture" means a permanent loss of entitlement to pay or allowances
9 and any forfeiture under this code is not a forfeiture for purposes of Article X, Section
10 2, of the Wisconsin constitution.

11 (12) "Judge advocate" means a commissioned officer of the organized state
12 military forces who is an attorney licensed to practice in this state or a member in
13 good standing of the bar of the highest court of another state, and is any of the
14 following:

15 (a) Certified or designated as a judge advocate in the Judge Advocate General's
16 Corps of the army, air force, navy, or the marine corps or designated as a law
17 specialist as an officer of the coast guard, or a reserve component of one of these.

18 (b) Certified as a non-federally recognized judge advocate, under regulations
19 promulgated subject to this provision, by the senior judge advocate of the commander
20 of the force in the state military force of which the accused is a member, as competent
21 to perform military justice duties required by this code. If there is no judge advocate
22 available, then certification may be made by the senior judge advocate of the
23 commander of another force in the state military forces, as the convening authority
24 directs.

1 (13) "Military court" means a court of inquiry under s. 322.135 or a
2 court-martial.

3 (14) "Military judge" means an official of a general or special court-martial
4 detailed under s. 322.026.

5 (15) "Military offenses" means those offenses prescribed under articles 77,
6 principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation;
7 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment,
8 appointment, or separation; 85, desertion; 86, absence without leave; 87, missing
9 movement; 88, contempt toward officials; 89, disrespect towards superior
10 commissioned officer; 90, assaulting or willfully disobeying superior commissioned
11 officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer,
12 or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment;
13 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96,
14 releasing prisoner without proper authority; 97, unlawful detention; 98,
15 noncompliance with procedural rules; 99, misbehavior before the enemy; 100,
16 subordinate compelling surrender; 101, improper use of countersign; 102, forcing a
17 safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105,
18 misconduct as prisoner; 107, false official statements; 108, military property — loss,
19 damage, destruction, or wrongful disposition; 109, property other than military
20 property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,
21 drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;
22 112a, wrongful use, or possession of controlled substances; 113, misbehavior of
23 sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking
24 speeches or gestures; 120, rape or carnal knowledge; 121, larceny and wrongful
25 appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion;

1 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against
2 the government; 133, conduct unbecoming an officer and a gentleman; and 134,
3 general; of this code.

4 (16) "Nonmilitary offenses" mean offenses which are in the state's civilian
5 penal statute and are not offenses in this code.

6 (17) "Officer" means a commissioned or warrant officer.

7 (18) "Officer in charge" means a member of the naval militia, the navy, the
8 marine corps, or the coast guard as designated by appropriate authority.

9 (19) "Record," when used in connection with the proceedings of a
10 court-martial, means any of the following:

11 (a) An official written transcript, written summary, or other writing relating
12 to the proceedings.

13 (b) An official audiotape, videotape, digital image or file, or similar material
14 from which sound, or sound and visual images, depicting the proceedings may be
15 reproduced.

16 (20) "Senior force commander" means the commander of the same force of the
17 state military forces as the accused.

18 (21) "Senior force judge advocate" means the senior judge advocate of the
19 commander of the same force of the state military forces as the accused and who is
20 that commander's chief legal advisor.

21 (22) "State active duty" means full-time duty in the state military forces under
22 an order of the governor or otherwise issued by authority of law, and paid by state
23 funds, and includes travel to and from duty.

24 (23) "State military forces" means the Wisconsin army and air national guard,
25 the national guard, as defined in 32 USC 502, 503, or 904, the state defense force, the

1 organized naval militia of the state, and any other military force organized under the
2 Constitution and laws of the state, and does not include the unorganized militia,
3 state guard, or home guard, when not in a status subjecting them to exclusive
4 jurisdiction under 10 USC ch. 47.

5 (24) "Superior commissioned officer" means a commissioned officer superior in
6 rank or command.

7 (25) "Unit Training Assembly" means an assembly for drill and instruction
8 which may consist of a single ordered formation of a company, battery, squadron, or
9 detachment, or, when authorized by the commander, a series of ordered formations
10 of those organizations.

11 **322.002 Article 2—Persons subject to this code; jurisdiction.** (1) Except
12 as provided in s. 322.003, this code applies only to members of the state military
13 forces at all times.

14 (2) Subject matter jurisdiction is established if a nexus exists between an
15 offense under this code and the state military force. Courts-martial have primary
16 jurisdiction of military offenses as defined in s. 322.001. A proper civilian court has
17 primary jurisdiction of a nonmilitary offense when an act or omission violates both
18 this code and local criminal law, foreign or domestic. In this case, a court-martial
19 may be initiated only after the civilian authority has declined to prosecute or
20 dismissed the charge, provided jeopardy has not attached. Jurisdiction over
21 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be
22 determined by the underlying offense.

23 **322.003 Article 3—Jurisdiction to try certain personnel.** (1) Each
24 person discharged from a state military force who is later charged with having
25 fraudulently obtained a discharge is, subject to s. 322.043, subject to trial by

1 court-martial on that charge and is, after apprehension, subject to this code while
2 in custody under the direction of the state military forces for that trial. Upon
3 conviction of that charge that person is subject to trial by court-martial for all
4 offenses under this code committed before the fraudulent discharge.

5 (2) No person who has deserted from a state military force may be relieved from
6 amenability to the jurisdiction of this code by virtue of a separation from any later
7 period of service.

8 **322.005 Article 5—Territorial applicability of the code.** (1) This code has
9 applicability in all places, provided that either the person subject to the code is in a
10 duty status or, if not in a duty status, that there is a nexus between the act or omission
11 constituting the offense and the efficient functioning of the state military forces;
12 however, this grant of military jurisdiction shall neither preclude nor limit civilian
13 jurisdiction over an offense.

14 (2) Military courts may be convened and held in units of a state military force
15 while those units are serving outside the state with the same jurisdiction and powers
16 as to persons subject to this code as if the proceedings were held inside the state, and
17 offenses committed outside the state may be tried and punished either inside or
18 outside the state.

19 **322.006 Article 6—Judge advocates.** (1) The senior force judge advocates
20 in each of the state's military forces or that judge advocate's delegates shall make
21 frequent inspections in the field in supervision of the administration of military
22 justice in that force.

23 (2) Convening authorities shall at all times communicate directly with their
24 judge advocates in matters relating to the administration of military justice. The

1 judge advocate of any command is entitled to communicate directly with the judge
2 advocate of a superior or subordinate command, or with the state judge advocate.

3 (3) No person who has acted as member, military judge, trial counsel, defense
4 counsel, or investigating officer, or who has been a witness, in any case may later act
5 as a judge advocate to any reviewing authority upon the same case.

6 SUBCHAPTER II

7 APPREHENSION AND RESTRAINT

8 **322.007 Article 7—Apprehension.** (1) In this section, “apprehension”
9 means the taking of a person into custody.

10 (2) Any person authorized by this code or by the Uniform Code of Military
11 Justice, or by regulations issued under either, to apprehend persons subject to this
12 code, any marshal of a court-martial appointed subject to the provisions of this code,
13 and any peace officer or civil officer having authority to apprehend offenders under
14 the laws of the United States or of a state, may do so upon probable cause that an
15 offense has been committed and that the person apprehended committed it.

16 (3) Commissioned officers, warrant officers, petty officers, and
17 noncommissioned officers have authority to quell quarrels, frays, and disorders
18 among persons subject to this code and to apprehend persons subject to this code.

19 (4) If an offender is apprehended outside the state, the offender’s return to the
20 state must be in accordance with normal extradition procedures or by reciprocal
21 agreement.

22 (5) No person authorized by this section to apprehend persons subject to this
23 code or the place where an offender is confined, restrained, held, or otherwise housed
24 may require payment of any fee or charge for so receiving, apprehending, confining,

1 restraining, holding, or otherwise housing a person except as otherwise provided by
2 law.

3 **322.009 Article 9—Imposition of restraint. (1)** In this section:

4 (a) “Arrest” means the restraint of a person by an order, not imposed as a
5 punishment for an offense, directing him or her to remain within certain specified
6 limits.

7 (b) “Confinement” means the physical restraint of a person.

8 (2) An enlisted member may be ordered into arrest or confinement by any
9 commissioned officer by an order, oral or written, delivered in person or through
10 other persons subject to this code. A commanding officer may authorize warrant
11 officers, petty officers, or noncommissioned officers to order enlisted members of the
12 commanding officer’s command or subject to the commanding officer’s authority into
13 arrest or confinement.

14 (3) A commissioned officer, a warrant officer, or a civilian subject to this code
15 or to trial there under may be ordered into arrest or confinement only by a
16 commanding officer to whose authority the person is subject, by an order, oral or
17 written, delivered in person or by another commissioned officer. The authority to
18 order persons into arrest or confinement may not be delegated.

19 (4) No person may be ordered into arrest or confinement except for probable
20 cause.

21 (5) This section does not limit the authority of persons authorized to apprehend
22 offenders to secure the custody of an alleged offender until proper authority may be
23 notified.

24 **322.010 Article 10—Restraint of persons charged with offenses.** Any
25 person subject to this code charged with an offense under this code may be ordered

1 into arrest or confinement, as circumstances may require. When any person subject
2 to this code is placed in arrest or confinement prior to trial, immediate steps shall be
3 taken to inform the person of the specific wrong of which the person is accused and
4 diligent steps shall be taken to try the person or to dismiss the charges and release
5 the person.

6 **322.011 Article 11—Place of confinement; reports and receiving of**
7 **prisoners.** (1) If a person subject to this code is confined before, during, or after
8 trial, he or she shall be in a civilian or military confinement.

9 (2) No sheriff or other person authorized to receive prisoners subject to sub. (1)
10 may refuse to receive or keep any prisoner committed to the person's charge by a
11 commissioned officer of the state military forces, when the committing officer
12 furnishes a statement, signed by the officer, of the offense charged against the
13 prisoner, unless otherwise authorized by law.

14 (3) Every person authorized to receive prisoners subject to sub. (1) to whose
15 charge a prisoner is committed shall, within 24 hours after that commitment or as
16 soon as the person is released from guard, report to the commanding officer of the
17 prisoner the name of the prisoner, the offense charged against the prisoner, and the
18 name of the person who ordered or authorized the commitment.

19 **322.012 Article 12—Confinement with enemy prisoners prohibited.** No
20 member of a state military force may be placed in confinement in immediate physical
21 association with enemy prisoners or other foreign nationals not members of the
22 armed forces.

23 **322.013 Article 13—Punishment prohibited before trial.** No person,
24 while being held for trial or awaiting a verdict, may be subjected to punishment or
25 penalty other than arrest or confinement upon the charges pending against the

1 person, nor shall the arrest or confinement imposed upon the person be any more
2 rigorous than the circumstances required to insure the person's presence, but the
3 person may be subjected to minor punishment during that period for infractions of
4 discipline.

5 **322.014 Article 14—Delivery of offenders to civil authorities.** (1) A
6 person subject to this code accused of an offense under this code or under the state's
7 civilian penal statute may be delivered to the civil authority for trial or confinement.

8 (2) When delivery under this section is made to any civil authority of a person
9 undergoing sentence of a court-martial, the delivery, if followed by conviction in a
10 civil tribunal, interrupts the execution of the sentence of the court-martial, and the
11 offender after having answered to the civil authorities for the offense shall, upon the
12 request of competent military authority, be returned to the place of original custody
13 for the completion of the person's sentence.

14 SUBCHAPTER III

15 NONJUDICIAL PUNISHMENT

16 **322.015 Article 15—Commanding officer's nonjudicial punishment.** (1)
17 Under regulations as prescribed, any commanding officer, and for purposes of this
18 section, officers-in-charge, may impose disciplinary punishments for minor offenses
19 without the intervention of a court-martial. The governor, the adjutant general, or
20 an officer of a general or flag rank in command may delegate the powers under this
21 section to a principal assistant who is a member of a state military force.

22 (2) Any commanding officer may impose any of the following upon enlisted
23 members of the officer's command:

24 (a) Admonition.

25 (b) Reprimand.

1 (c) Withholding of privileges for not more than 6 months, which need not be
2 consecutive.

3 (d) Forfeiture of not more than 7 days' pay.

4 (e) Fine of not more than 7 days' pay.

5 (f) Reduction to the next inferior pay grade, if the grade from which demoted
6 is within the promotion authority of the officer imposing the reduction or any officer
7 subordinate to the one who imposes the reduction.

8 (g) Extra duties, including fatigue or other duties, for not more than 14 days,
9 which need not be consecutive.

10 (h) Restriction to certain specified limits, with or without suspension from duty,
11 for not more than 14 days, which need not be consecutive.

12 (3) Any commanding officer of the grade of major or lieutenant commander, or
13 above may impose any of the following upon enlisted members of the officer's
14 command:

15 (a) Any punishment authorized in sub. (2) (a), (b), and (c).

16 (b) Forfeiture of not more than one-half of one month's pay per month for 2
17 months.

18 (c) Fine of not more than one month's pay.

19 (d) Reduction to the lowest or any intermediate pay grade, if the grade from
20 which demoted is within the promotion authority of the officer imposing the
21 reduction or any officer subordinate to the one who imposes the reduction, but an
22 enlisted member in a pay grade above E-4 may not be reduced more than 2 pay
23 grades.

24 (e) Extra duties, including fatigue or other duties, for not more than 45 days,
25 which need not be consecutive.

1 (f) Restriction to certain specified limits, with or without suspension from duty,
2 for not more than 60 days, which need not be consecutive.

3 (4) The governor, the adjutant general, an officer exercising general
4 court-martial convening authority, or an officer of a general or flag rank in command
5 may impose any of the following penalties:

6 (a) Upon officers of the officer's command, any punishment authorized in sub.
7 (3) (a), (b), (c), and (f) and arrest in quarters for not more than 30 days, which need
8 not be consecutive.

9 (b) Upon enlisted members of the officer's command, any punishment
10 authorized in sub. (3).

11 (5) Whenever any of the punishments under this section are combined to run
12 consecutively, the total length of the combined punishment cannot exceed the
13 authorized duration of the longest punishment in the combination, and there must
14 be an apportionment of punishments so that no single punishment in the
15 combination exceeds its authorized length under this section.

16 (6) The service member shall have the right to demand trial by court-martial
17 in lieu of nonjudicial punishment, and shall have the right to consult with a judge
18 advocate.

19 (7) The officer who imposes the punishment, or the successor in command, may,
20 at any time, suspend, set aside, mitigate, or remit any part or amount of the
21 punishment and restore all rights, privileges, and property affected. The officer also
22 may do any of the following:

23 (a) Mitigate reduction in grade to forfeiture of pay.

24 (b) Mitigate arrest in quarters to restriction.

25 (c) Mitigate extra duties to restriction.

1 (8) The mitigated punishment shall not be for a greater period than the
2 punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the
3 amount of the forfeiture shall not be greater than the amount that could have been
4 imposed initially under this section by the officer who imposed the punishment
5 mitigated.

6 (9) A person punished under this section who considers the punishment unjust
7 or disproportionate to the offense may, through the proper channel, appeal to the
8 next superior authority within 15 days after the punishment is either announced or
9 sent to the accused, as the commander may determine. The appeal shall be promptly
10 forwarded and decided, but the person punished may in the meantime be required
11 to undergo the punishment adjudged. The superior authority may exercise the same
12 powers with respect to the punishment imposed as may be exercised under sub. (7)
13 by the officer who imposed the punishment. Before acting on an appeal from a
14 punishment, the authority that is to act on the appeal may refer the case to a judge
15 advocate for consideration and advice.

16 (10) The imposition and enforcement of disciplinary punishment under this
17 section for any act or omission is not a bar to trial by court-martial or a civilian court
18 of competent jurisdiction for a serious crime or offense growing out of the same act
19 or omission and not properly punishable under this section; but the fact that a
20 disciplinary punishment has been enforced may be shown by the accused upon trial
21 and, when so shown, it shall be considered in determining the measure of
22 punishment to be adjudged in the event of a finding of guilty.

23 (11) Whenever a punishment of forfeiture of pay is imposed under this section,
24 the forfeiture may apply to pay accruing before, on, or after the date that punishment
25 is imposed.

(12) Regulations may prescribe the form of records to be kept of proceedings under this section and may prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV

COURT-MARTIAL JURISDICTION

322.016 Article 16—Courts-martial classified. The 3 kinds of courts-martial in the state military forces are as follows:

(1) General courts-martial, consisting of any of the following:

(a) A military judge and not less than 5 members.

(b) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves.

(2) Special courts-martial, consisting of any of the following:

(a) A military judge and not less than 3 members. An accused may waive having 12 members and proceed to a special court-martial with not less than 6 members.

(b) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in sub. (1) (b) so requests.

(3) Summary courts-martial, consisting of one commissioned officer.

322.017 Article 17—Jurisdiction of courts-martial in general. Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are subject to this code. Additionally, the state military forces have court-martial jurisdiction over all members subject to this code.

1 **322.018 Article 18—Jurisdiction of general courts-martial.** Subject to
2 s. 322.017, general courts-martial have jurisdiction to try persons subject to this
3 code for any offense made punishable by this code, and may, under limitations as the
4 governor may prescribe, adjudge any punishment not forbidden by this code.

5 **322.019 Article 19—Jurisdiction of special courts-martial.** Subject to s.
6 322.017, special courts-martial have jurisdiction to try persons subject to this code
7 for any offense made punishable by this code, and may, under limitations as the
8 governor may prescribe, adjudge any punishment not forbidden by this code except
9 dishonorable discharge, dismissal, confinement for more than one year, forfeiture of
10 pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

11 **322.020 Article 20—Jurisdiction of summary courts-martial. (1)**
12 Subject to s. 322.017, summary courts-martial have jurisdiction to try persons
13 subject to this code, except officers, cadets, candidates, and midshipmen, for any
14 offense made punishable by this code under limitations as the governor may
15 prescribe.

16 **(2)** No person with respect to whom summary courts-martial have jurisdiction
17 may be brought to trial before a summary court-martial if that person objects. If
18 objection to trial by summary court-martial is made by an accused, trial by special
19 or general court-martial may be ordered, as may be appropriate. Summary
20 courts-martial may, under limitations as the governor may prescribe, adjudge any
21 punishment not forbidden by this code except dismissal, dishonorable or
22 bad-conduct discharge, confinement for more than one month, restriction to
23 specified limits for more than 2 months, or forfeiture of more than two-thirds of one
24 month's pay.

SUBCHAPTER V

APPOINTMENT AND COMPOSITION

OF COURTS-MARTIAL

322.022 Article 22—Who may convene general courts-martial. (1)

General courts-martial may be convened by any of the following:

- (a) The governor.
- (b) The adjutant general.
- (c) The commanding general officer of any force of the state military forces.
- (d) The commanding officer of a division or a separate brigade.
- (e) The commanding officer of a separate wing.

(2) If any commanding officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by a superior authority if considered desirable by the authority.

322.023 Article 23—Who may convene special courts-martial. (1)

Special courts-martial may be convened by any of the following:

- (a) Any person who may convene a general court-martial.
- (b) The commanding officer of a garrison, fort, post, camp, station, air national guard base, or naval base or station.
- (c) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the army national guard.
- (d) The commanding officer of a wing, group, separate squadron, or corresponding unit of the air national guard.
- (e) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

1 (2) If the officer is an accuser, the court shall be convened by superior
2 competent authority and may in any case be convened by a superior authority if
3 considered desirable by the superior competent authority.

4 **322.024 Article 24—Who may convene summary courts-martial. (1)**
5 Summary courts-martial may be convened by any of the following:

6 (a) Any person who may convene a general or special court-martial.

7 (b) The commanding officer of a detached company or other detachment, or
8 corresponding unit of the army national guard.

9 (c) The commanding officer of a detached squadron or other detachment, or
10 corresponding unit of the air national guard.

11 (d) The commanding officer or officer in charge of any other command when
12 empowered by the adjutant general.

13 (2) When only one commissioned officer is present with a command or
14 detachment that officer shall be the summary court-martial of that command or
15 detachment and shall hear and determine all summary court-martial cases.
16 Summary courts-martial may, however, be convened in any case by superior
17 competent authority if considered desirable by that authority.

18 **322.025 Article 25—Who may serve as a member on courts-martial. (1)**
19 Any commissioned officer of the state military forces is eligible to serve on all
20 courts-martial for the trial of any person subject to this code.

21 (2) Any warrant officer of the state military forces is eligible to serve on general
22 and special courts-martial for the trial of any person subject to this code, other than
23 a commissioned officer.

24 (3) Any enlisted member of the state military forces who is not a member of the
25 same unit as the accused is eligible to serve on general and special courts-martial

1 for the trial of any enlisted member subject to this code, but that member shall serve
2 as a member of a court only if, before the conclusion of a session called by the military
3 judge under s. 322.039 (1) prior to trial or, in the absence of a session, before the court
4 is assembled for the trial of the accused, the accused personally has requested orally
5 on the record or in writing that enlisted members serve on it. After a request, the
6 accused may not be tried by a general or special court-martial the membership of
7 which does not include enlisted members in a number comprising at least one-third
8 of the total membership of the court, unless eligible enlisted members cannot be
9 obtained on account of physical conditions or military exigencies. If the members
10 cannot be obtained, the court may be assembled and the trial held without them, but
11 the convening authority shall make a detailed written statement, to be appended to
12 the record, stating why they could not be obtained.

13 (4) When it can be avoided, no person subject to this code may be tried by a
14 court-martial any member of which is junior to the accused in rank or grade.

15 (5) When convening a court-martial, the convening authority shall detail
16 members of the state military forces as, in the convening authority's opinion, are best
17 qualified for the duty by reason of age, education, training, experience, length of
18 service, and judicial temperament. No member of the state military forces is eligible
19 to serve as a member of a general or special court-martial when that member is the
20 accuser, a witness, or has acted as investigating officer or as counsel in the same case.

21 (6) Before a court-martial is assembled for the trial of a case, the convening
22 authority may excuse a member of the court from participating in the case.

23 (7) The convening authority may delegate the authority under this section to
24 a judge advocate or to any other principal assistant.

1 (8) In this section, "unit" means any regularly organized body of the state
2 military forces not larger than a company, a squadron, a division of the naval militia,
3 or a body corresponding to one of them.

4 **322.026 Article 26—Military judge of a general or special**
5 **court-martial. (1)** A military judge shall be detailed to each general and special
6 court-martial. The military judge shall preside over each open session of the
7 court-martial to which the military judge has been detailed.

8 (2) A military judge shall meet all of the following qualifications:

9 (a) Be a commissioned officer of an organized state military force.

10 (b) Be an attorney licensed to practice in this state or be a member of the bar
11 of a federal court for at least 5 years.

12 (c) Certified as qualified for duty as a military judge by the senior force judge
13 advocate which is the same force as the accused.

14 (3) In the instance when a military judge is not an attorney licensed to practice
15 in this state, the military judge shall be deemed admitted on motion, subject to filing
16 with the senior force judge advocate of the same force as the accused setting forth the
17 qualifications provided in sub. (2).

18 (4) The military judge of a general or special court-martial shall be designated
19 by the state senior force judge advocate of the same force as the accused if possible,
20 or otherwise by the senior of the senior force judge advocates, or a designee, for detail
21 by the convening authority. Neither the convening authority nor any staff member
22 of the convening authority shall prepare or review any report concerning the
23 effectiveness, fitness, or efficiency of the military judge so detailed, which relates to
24 performance of duty as a military judge.

1 (5) No person is eligible to act as military judge in a case if that person is the
2 accuser or a witness, or has acted as investigating officer, trial counsel, or defense
3 counsel in the same case.

4 (6) The military judge of a court-martial may not consult with the members
5 of the court except in the presence of the accused, trial counsel, and defense counsel
6 nor vote with the members of the court.

7 **322.027 Article 27—Detail of trial counsel and defense counsel.** (1) For
8 each general and special court-martial the authority convening the court shall detail
9 trial counsel, defense counsel, and assistants as are appropriate.

10 (2) No person who has acted as investigating officer, military judge, witness or
11 court member in any case may act later as trial counsel, assistant trial counsel, or,
12 unless expressly requested by the accused, as defense counsel or assistant or
13 associate defense counsel in the same case. No person who has acted for the
14 prosecution may act later in the same case for the defense nor may any person who
15 has acted for the defense act later in the same case for the prosecution.

16 (3) Except as provided in sub. (4), trial counsel or defense counsel detailed for
17 a general or special court-martial must meet all of the following:

18 (a) A judge advocate as defined in this code.

19 (b) In the case of trial counsel, an attorney licensed to practice in this state.

20 (4) In the instance when a defense counsel is not an attorney licensed to
21 practice in this state, the defense counsel shall be deemed admitted on motion,
22 subject to filing with the military judge setting forth the qualifications that counsel
23 is all of the following:

24 (a) Commissioned officer of the armed forces of the United States or a
25 component thereof.

1 (b) Member in good standing of the bar of the highest court of another state.

2 (c) Certified as a judge advocate in the Judge Advocate General's Corps of the
3 army, air force, navy, or the marine corps, or a judge advocate as defined in this code.

4 (5) Trial counsel detailed to a court-martial shall be considered a prosecutor
5 under state statutes.

6 **322.028 Article 28—Detail or employment of reporters and**
7 **interpreters.** Under regulations as may be prescribed, the convening authority of
8 a general or special court-martial or court of inquiry shall detail or employ qualified
9 court reporters, who shall record the proceedings of and testimony taken before that
10 court and may detail or employ interpreters who shall interpret for the court.

11 **322.029 Article 29—Absent and additional members.** (1) No member of
12 a general or special court-martial may be absent or excused after the court has been
13 assembled for the trial of the accused unless excused as a result of a challenge,
14 excused by the military judge for physical disability or other good cause, or excused
15 by order of the convening authority for good cause.

16 (2) Whenever a general court-martial, other than a general court-martial
17 composed of a military judge only, is reduced below 5 members, the trial may not
18 proceed unless the convening authority details new members sufficient in number
19 to provide not less than the applicable minimum number of 5 members. The trial
20 may proceed with the new members present after the recorded evidence previously
21 introduced before the members of the court has been read to the court in the presence
22 of the military judge, the accused, and counsel for both sides.

23 (3) Whenever a special court-martial, other than a special court-martial
24 composed of a military judge only, is reduced below 3 members, the trial may not
25 proceed unless the convening authority details new members sufficient in number

1 to provide not less than 3 members, unless the accused waives the number of
2 members. The trial shall proceed with the new members present as if no evidence
3 had been introduced previously at the trial, unless a verbatim record of the evidence
4 previously introduced before the members of the court or a stipulation is read to the
5 court in the presence of the military judge, the accused, and counsel for both sides.

6 (4) If the military judge of a court-martial composed of a military judge only
7 is unable to proceed with the trial because of physical disability, as a result of a
8 challenge, or for other good cause, the trial shall proceed, subject to any applicable
9 conditions of s. 322.016 (1) (b) or (2) (b), after the detail of a new military judge as if
10 no evidence had previously been introduced, unless a verbatim record of the evidence
11 previously introduced or a stipulation is read in court in the presence of the new
12 military judge, the accused, and counsel for both sides.

13 SUBCHAPTER VI

14 PRETRIAL PROCEDURE

15 **322.030 Article 30—Charges and specifications.** (1) Charges and
16 specifications shall be signed by a person subject to this code under oath before a
17 commissioned officer authorized by s. 322.136 (1) to administer oaths and shall state
18 all of the following:

19 (a) The signer has personal knowledge of, or has investigated, the matters set
20 forth in the charges and specifications.

21 (b) The facts are true to the best of the signer's knowledge and belief.

22 (2) Upon the preferring of charges, the proper authority shall take immediate
23 steps to determine what disposition should be made in the interest of justice and
24 discipline, and the person accused shall be informed of the charges as soon as
25 practicable.

1 **322.031 Article 31—Compulsory self-incrimination prohibited.** (1) No
2 person subject to this code may compel any person to incriminate himself or herself
3 or to answer any question the answer to which may tend to incriminate him or her.

4 (2) No person subject to this code may interrogate or request any statement
5 from an accused or a person suspected of an offense without first informing that
6 person of the nature of the accusation and advising that person that the person does
7 not have to make any statement regarding the offense of which the person is accused
8 or suspected and that any statement made by the person may be used as evidence
9 against the person in a trial by court-martial.

10 (3) No person subject to this code may compel any person to make a statement
11 or produce evidence before any military court if the statement or evidence is not
12 material to the issue and may tend to degrade the person.

13 (4) No statement obtained from any person in violation of this section or
14 through the use of coercion, unlawful influence, or unlawful inducement may be
15 received in evidence against the person in a trial by court-martial.

16 **322.032 Article 32—Investigation.** (1) No charge or specification may be
17 referred to a general court-martial for trial until a thorough and impartial
18 investigation of all the matters set forth has been made. This investigation shall
19 include inquiry as to the truth of the matter set forth in the charges, consideration
20 of the form of charges, and a recommendation as to the disposition which should be
21 made of the case in the interest of justice and discipline.

22 (2) The accused shall be advised of the charges against the accused and of the
23 right to be represented at that investigation by counsel. The accused has the right
24 to be represented at that investigation as provided in s. 322.038 and in regulations
25 prescribed under that section. At that investigation, full opportunity shall be given

1 to the accused to cross-examine witnesses against the accused, if they are available,
2 and to present anything the accused may desire in the accused's own behalf, either
3 in defense or mitigation, and the investigating officer shall examine available
4 witnesses requested by the accused. If the charges are forwarded after the
5 investigation, they shall be accompanied by a statement of the substance of the
6 testimony taken on both sides and a copy shall be given to the accused.

7 (3) If an investigation of the subject matter of an offense has been conducted
8 before the accused is charged with the offense, and if the accused was present at the
9 investigation and afforded the opportunities for representation, cross-examination,
10 and presentation prescribed in sub. (2), no further investigation of that charge is
11 necessary under this section unless it is demanded by the accused after the accused
12 is informed of the charge. A demand for further investigation entitles the accused
13 to recall witnesses for further cross-examination and to offer any new evidence in
14 the accused's own behalf.

15 (4) If evidence adduced in an investigation under this section indicates that
16 the accused committed an uncharged offense, the investigating officer may
17 investigate the subject matter of that offense without the accused having first been
18 charged with the offense if the accused is afforded all of the following:

- 19 (a) Present at the investigation;
20 (b) Informed of the nature of each uncharged offense investigated; and
21 (c) Afforded the opportunities for representation, cross-examination, and
22 presentation prescribed in sub. (2).

23 (5) The requirements of this section are binding on all persons administering
24 this code but failure to follow them does not constitute jurisdictional error.

1 **322.033 Article 33—Forwarding of charges.** When a person is held for trial
2 by general court-martial, the commanding officer shall within 8 days after the
3 accused is ordered into arrest or confinement, if practicable, forward the charges,
4 together with the investigation and allied papers, to the person exercising general
5 court-martial jurisdiction. If that is not practicable, the commanding officer shall
6 report in writing to that person the reasons for delay.

7 **322.034 Article 34—Advice of judge advocate and reference for trial.**

8 (1) Before directing the trial of any charge by general court-martial, the convening
9 authority shall refer it to a judge advocate for consideration and advice. The
10 convening authority may not refer a specification under a charge to a general
11 court-martial for trial unless the convening authority has been advised in writing
12 by a judge advocate that all the following conditions are met:

13 (a) The specification alleges an offense under this code.

14 (b) The specification is warranted by the evidence indicated in the report of
15 investigation under s. 322.032, if there is a report.

16 (c) A court-martial would have jurisdiction over the accused and the offense.

17 (2) The advice of the judge advocate under sub. (1) with respect to a
18 specification under a charge shall include a written and signed statement by the
19 judge advocate that does all of the following:

20 (a) Expressing conclusions with respect to each matter set forth in sub. (1).

21 (b) Recommending action that the convening authority take regarding the
22 specification.

23 (3) If the specification is referred for trial, the recommendation of the judge
24 advocate shall accompany the specification.

(4) If the charges or specifications are not correct formally or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

322.035 Article 35—Service of charges. The trial counsel shall serve or caused to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of 5 days after the service of charges upon the accused, or in a special court-martial, within a period of 3 days after the service of charges upon the accused.

SUBCHAPTER VII

TRIAL PROCEDURE

322.036 Article 36—Governor may prescribe regulations. Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this code, and for courts of inquiry, may be prescribed by the governor by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

322.037 Article 37—Unlawfully influencing action of court. (1) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the commanding officer's staff, may censure, reprimand, or admonish the court or any member, the military judge, or counsel, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member, in reaching

1 the findings or sentence in any case, or the action of any convening, approving, or
2 reviewing authority with respect to their judicial acts. The foregoing provisions of
3 the subsection shall not apply with respect to the any of the following:

4 (a) General instructional or informational courses in military justice if the
5 courses are designed solely for the purpose of instructing members of a command in
6 the substantive and procedural aspects of courts-martial.

7 (b) Statements and instructions given in open court by the military judge,
8 summary court-martial officer, or counsel.

9 (2) In the preparation of an effectiveness, fitness, or efficiency report, or any
10 other report or document used in whole or in part for the purpose of determining
11 whether a member of the state military forces is qualified to be advanced in grade,
12 or in determining the assignment or transfer of a member of the state military forces,
13 or in determining whether a member of the state military forces should be retained
14 on active status, no person subject to this code may, in preparing any report, do any
15 of the following:

16 (a) Consider or evaluate the performance of duty of any member as a member
17 of a court-martial or witness.

18 (b) Give a less favorable rating or evaluation of any counsel of the accused
19 because of zealous representation before a court-martial.

20 **322.038 Article 38—Duties of trial counsel and defense counsel.** (1) The
21 trial counsel of a general or special court-martial shall be an attorney licensed to
22 practice in this state and shall prosecute in the name of the state, and shall, under
23 the direction of the court, prepare the record of the proceedings.

24 (2) (a) The accused has the right to be represented in defense before a general
25 or special court-martial or at an investigation under s. 322.032.

1 (b) The accused may be represented by civilian counsel at the provision and
2 expense of the accused.

3 (c) The accused may be represented by any of the following:

4 1. Military counsel detailed under s. 322.027.

5 2. Military counsel of the accused's own selection if that counsel is reasonably
6 available as determined under par. (g).

7 (d) If the accused is represented by civilian counsel, military counsel detailed
8 or selected under par. (c) shall act as associate counsel unless excused by military
9 judge at the request of the accused.

10 (e) Except as provided under par. (f), if the accused is represented by military
11 counsel of his or her own selection under par. (c) 2., any military counsel detailed
12 under par. (c) 1. shall be excused.

13 (f) The accused is not entitled to be represented by more than one military
14 counsel. However, the person authorized under regulations prescribed under s.
15 322.027 to detail counsel, in that person's sole discretion may do any of the following:

16 1. Detail additional military counsel as assistant defense counsel.

17 2. If the accused is represented by military counsel of the accused's own
18 selection under par. (c) 2., may approve a request from the accused that military
19 counsel detailed under par. (c) 1. act as associate defense counsel.

20 (g) The senior force judge advocate of the same force of which the accused is a
21 member, shall determine whether the military counsel selected by an accused is
22 reasonably available.

23 (3) In any court-martial proceeding resulting in a conviction, the defense
24 counsel may do any of the following:

1 (a) Forward for attachment to the record of proceedings a brief of matters as
2 counsel determines should be considered in behalf of the accused on review, including
3 any objection to the contents of the record which counsel considers appropriate.

4 (b) Assist the accused in the submission of any matter under s. 322.060.

5 (c) Take other action authorized by this code.

6 **322.039 Article 39—Sessions. (1)** At any time after the service of charges
7 which have been referred for trial to a court-martial composed of a military judge
8 and members, the military judge may, subject to s. 322.035, call the court into session
9 without the presence of the members for the purpose of any of the following:

10 (a) Hearing and determining motions raising defenses or objections which are
11 capable of determination without trial of the issues raised by a plea of not guilty.

12 (b) Hearing and ruling upon any matter which may be ruled upon by the
13 military judge under this code, whether or not the matter is appropriate for later
14 consideration or decision by the members of the court.

15 (c) Holding the arraignment and receiving the pleas of the accused.

16 (d) Performing any other procedural function which does not require the
17 presence of the members of the court under this code.

18 (2) These proceedings shall be conducted in the presence of the accused, the
19 defense counsel, and the trial counsel and shall be made a part of the record. These
20 proceedings may be conducted notwithstanding the number of court members and
21 without regard to s. 322.029.

22 (3) When the members of a court-martial deliberate or vote, only the members
23 may be present. All other proceedings, including any other consultation of the
24 members of the court with counsel or the military judge, shall be made a part of the

1 record and shall be in the presence of the accused, the defense counsel, the trial
2 counsel, and the military judge.

3 **322.040 Article 40—Continuances.** The military judge of a court-martial
4 or a summary court-martial may, for reasonable cause, grant a continuance to any
5 party for time, and as often, as may appear to be just.

6 **322.041 Article 41—Challenges.** (1) (a) The military judge and members
7 of a general or special court-martial may be challenged by the accused or the trial
8 counsel for cause stated to the court. The military judge or the court shall determine
9 the relevancy and validity of challenges for cause and may not receive a challenge
10 to more than one person at a time. Challenges by the trial counsel shall ordinarily
11 be presented and decided before those by the accused are offered.

12 (b) If exercise of a challenge for cause reduces the court below the minimum
13 number of members required by s. 322.016, all parties shall, notwithstanding s.
14 322.029, either exercise or waive any challenge for cause then apparent against the
15 remaining members of the court before additional members are detailed to the court.
16 However, peremptory challenges shall not be exercised at that time.

17 (2) (a) Each accused and the trial counsel are entitled initially to one
18 peremptory challenge of members of the court. The military judge may not be
19 challenged except for cause.

20 (b) If exercise of a peremptory challenge reduces the court below the minimum
21 number of members required by s. 322.016, the parties shall, notwithstanding s.
22 322.029, either exercise or waive any remaining peremptory challenge, not
23 previously waived, against the remaining members of the court before additional
24 members are detailed to the court.

1 (c) Whenever additional members are detailed to the court, and after any
2 challenges for cause against additional members are presented and decided, each
3 accused and the trial counsel are entitled to one peremptory challenge against
4 members not previously subject to peremptory challenge.

5 **322.042 Article 42—Oaths or affirmations.** (1) Before performing their
6 respective duties, military judges, general and special courts-martial members, trial
7 counsel, defense counsel, reporters, and interpreters shall take an oath or
8 affirmation in the presence of the accused to perform their duties faithfully. The form
9 of the oath or affirmation, the time and place of the taking, the manner of recording
10 the same, and whether the oath or affirmation shall be taken for all cases in which
11 these duties are to be performed or for a particular case, shall be as prescribed in
12 regulation or as provided by law. These regulations may provide that an oath or
13 affirmation to perform faithfully the duties as a military judge, trial counsel, or
14 defense counsel may be taken at any time by any judge advocate or other person
15 certified or designated to be qualified or competent for the duty, and if an oath or
16 affirmation is taken, it need not again be taken at the time the judge advocate or
17 other person is detailed to that duty.

18 (2) Each witness before a court-martial shall be examined under oath or
19 affirmation.

20 **322.043 Article 43—Statute of limitations.** (1) Except as otherwise
21 provided in this section, a person charged with any offense is not liable to be tried
22 by court-martial or punished under s. 322.015 if the offense was committed more
23 than 3 years before the receipt of sworn charges and specifications by an officer
24 exercising court-martial jurisdiction over the command or before the imposition of
25 punishment under s. 322.015.

1 (2) Periods in which the accused is absent without authority or fleeing from
2 justice shall be excluded in computing the period of limitation prescribed in this
3 section.

4 (3) Periods in which the accused was absent from territory in which the state
5 has the authority to apprehend him or her, or in the custody of civil authorities, or
6 in the hands of the enemy, shall be excluded in computing the period of limitation
7 prescribed in this section.

8 (4) When the United States is at war based on a congressional declaration or
9 by presidential declaration under the Global War on Terror, the running of any
10 statute of limitations is suspended until 2 years after the termination of hostilities,
11 as proclaimed by the president or by a joint resolution of congress, and is applicable
12 to any offense under this code under any of the following circumstances:

13 (a) Involving fraud or attempted fraud against the United States, any state, or
14 any agency of either in any manner, whether by conspiracy or not.

15 (b) Committed in connection with the acquisition, care, handling, custody,
16 control, or disposition of any real or personal property of the United States or any
17 state.

18 (c) Committed in connection with the negotiation, procurement, award,
19 performance, payment, interim financing, cancellation, or other termination or
20 settlement, of any contract, subcontract, or purchase order which is connected with
21 or related to the prosecution of the war, or with any disposition of termination
22 inventory by any war contractor or government agency.

23 (5) (a) If charges or specifications are dismissed as defective or insufficient for
24 any cause and the period prescribed by the applicable statute of limitations has
25 expired, or will expire within 180 days after the date of dismissal of the charges and

1 specifications, trial and punishment under new charges and specifications are not
2 barred by the statute of limitations if the conditions specified in par. (b) are met.

3 (b) The conditions referred to in par. (a) are that the new charges and
4 specifications satisfy all of the following:

5 1. Be received by an officer exercising summary court-martial jurisdiction over
6 the command within 180 days after the dismissal of the charges or specifications.

7 2. Allege the same acts or omissions that were alleged in the dismissed charges
8 or specifications, or allege acts or omissions that were included in the dismissed
9 charges or specifications.

10 **322.044 Article 44—Former jeopardy.** (1) No person may, without his or
11 her consent, be tried a 2nd time for the same offense.

12 (2) No proceeding in which an accused has been found guilty by a court-martial
13 upon any charge or specification is a trial under this section until the finding of guilty
14 has become final after review of the case has been fully completed.

15 (3) A proceeding which, after the introduction of evidence but before a finding,
16 is dismissed or terminated by the convening authority or on motion of the
17 prosecution for failure of available evidence or witnesses without any fault of the
18 accused is a trial under this section.

19 **322.045 Article 45—Pleas of the accused.** (1) If an accused after
20 arraignment makes an irregular pleading, or after a plea of guilty sets up matter
21 inconsistent with the plea, or if it appears that the accused has entered the plea of
22 guilty improvidently or through lack of understanding of its meaning and effect, or
23 if the accused fails or refuses to plead, a plea of not guilty shall be entered in the
24 record, and the court shall proceed as though the accused had pleaded not guilty.

1 (2) With respect to any charge or specification to which a plea of guilty has been
2 made by the accused and accepted by the military judge or by a court-martial
3 without a military judge, a finding of guilty of the charge or specification may be
4 entered immediately without vote. This finding shall constitute the finding of the
5 court unless the plea of guilty is withdrawn prior to announcement of the sentence,
6 in which event, the proceedings shall continue as though the accused had pleaded
7 not guilty.

8 **322.046 Article 46—Opportunity to obtain witnesses and other**
9 **evidence.** The trial counsel, the defense counsel, and the court-martial shall have
10 equal opportunity to obtain witnesses and other evidence as prescribed by
11 regulations and provided by law. Process issued in court-martial cases to compel
12 witnesses to appear and testify and to compel the production of other evidence shall
13 apply the principles of law and the rules of courts-martial generally recognized in
14 military criminal cases in the courts of the armed forces of the United States, but
15 which may not be contrary to or inconsistent with this code. Process shall run to any
16 part of the United States, or the territories, commonwealths, and possessions, and
17 may be executed by civil officers as prescribed by the laws of the place where the
18 witness or evidence is located or of the United States.

19 **322.047 Article 47—Refusal to appear or testify.** (1) Any person not
20 subject to this code may be punished by the military court in the same manner as a
21 court of the state, if all of the following apply to that person:

22 (a) Has been duly subpoenaed to appear as a witness or to produce books and
23 records before a court-martial or court of inquiry, or before any military or civil
24 officer designated to take a deposition to be read in evidence before a court.

1 (b) Has been duly paid or tendered the fees and mileage of a witness at the rates
2 allowed to witnesses attending a court of the state.

3 (c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or
4 to testify or to produce any evidence which that person may have been legally
5 subpoenaed to produce.

6 (2) The fees and mileage of witnesses shall be advanced or paid out of the
7 appropriations for the compensation of witnesses.

8 **322.048 Article 48—Contempt.** A military judge may punish for contempt
9 any person who uses any menacing word, sign, or gesture in its presence, or who
10 disturbs its proceedings by any riot or disorder. A person subject to this code may
11 be punished for contempt by confinement not to exceed 30 days or a fine of \$100, or
12 both. A person not subject to this code may be punished for contempt by a military
13 court in the same manner as a court of the state.

14 **322.049 Article 49—Depositions.** (1) At any time after charges have been
15 signed as provided in s. 322.030, any party may take oral or written depositions
16 unless the military judge or summary court-martial officer hearing the case or, if the
17 case is not being heard, an authority competent to convene a court-martial for the
18 trial of those charges forbids it for good cause.

19 (2) The party at whose instance a deposition is to be taken shall give to every
20 other party reasonable written notice of the time and place for taking the deposition.

21 (3) A duly authenticated deposition taken upon reasonable notice to the other
22 parties, so far as otherwise admissible under the rules of evidence, may be read in
23 evidence or, in the case of audiotape, videotape, digital image or file, or similar
24 material, may be played in evidence before any military court, if any of the following
25 apply:

1 (a) The witness resides or is beyond the State in which the court is ordered to
2 sit, or beyond one hundred miles from the place of trial or hearing;

3 (b) The witness by reason of death, age, sickness, bodily infirmity,
4 imprisonment, military necessity, non amenability to process, or other reasonable
5 cause, is unable or refuses to appear and testify in person at the place of trial or
6 hearing.

7 (c) The present whereabouts of the witness is unknown.

8 **322.050 Article 50—Admissibility of records of courts of inquiry. (1)**

9 In any case not extending to the dismissal of a commissioned officer, the sworn
10 testimony, contained in the duly authenticated record of proceedings of a court of
11 inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise
12 admissible under the rules of evidence, be read in evidence by any party before a
13 court-martial if the accused was a party before the court of inquiry and if the same
14 issue was involved or if the accused consents to the introduction of evidence.

15 (2) Testimony may be read in evidence only by the defense in cases extending
16 to the dismissal of a commissioned officer.

17 (3) Testimony may also be read in evidence before a court of inquiry.

18 **322.0505 Article 50a—Defense of mental disease or defect. (1)** The
19 accused has an affirmative defense of mental disease or defect in a trial by
20 court-martial if, at the time of the commission of the acts constituting the offense,
21 the accused, as a result of a mental disease or defect, lacked substantial capacity
22 either to appreciate the wrongfulness of his or her conduct or to conform his or her
23 conduct to the requirements of the law. Mental disease or defect does not otherwise
24 constitute a defense.

1 (2) The accused has the burden of proving the defense of mental disease or
2 defect to a reasonable certainty by the greater weight of the credible evidence.

3 (3) Whenever lack of mental disease or defect of the accused with respect to an
4 offense is properly at issue, the military judge shall instruct the members of the
5 military court as to the defense of mental disease or defect under this section and
6 charge them to find the accused any one of the following:

7 (a) Guilty.

8 (b) Not guilty.

9 (c) Not guilty by reason of mental disease or defect.

10 (4) Sub. (3) does not apply to a court-martial composed of a military judge only.
11 In the case of a court-martial composed of a military judge only or a summary
12 court-martial officer, whenever mental disease or defect of the accused with respect
13 to an offense is properly at issue, the military judge or summary court-martial officer
14 shall find the accused of any of the following:

15 (a) Guilty.

16 (b) Not guilty.

17 (c) Not guilty by reason of mental disease or defect.

18 (5) Notwithstanding the provisions of s. 322.052, the accused shall be found not
19 guilty by reason of mental disease or defect if any of the following apply:

20 (a) A majority of the members of the court-martial present at the time the vote
21 is taken determines that the defense of mental disease or defect has been
22 established.

23 (b) In the case of a court-martial composed of a military judge only or a
24 summary court-martial officer, the military judge or summary court-martial officer
25 determines that the defense of mental disease or defect has been established.